of servant and master is made out, a charitable corporation is liable for its servants' negligent acts, — adopting the doctrine of *Foreman* v. *Mayor &c.*

Despite *Downes* v. *Hospital*, *supra*, it is generally law then that a corporation designed for charitable (or public) purposes is liable for the non-performance of whatever duty may be imposed upon it; nor is it a sufficient answer to allege that its non-performance was due to its servants' negligence, or that it possessed no funds but those dedicated to carrying out its charitable or public purposes. The exact extent of the duty imposed is often a troublesome question. That difficulty, however, does not affect the liability of a corporation once the duty is determined. But the decisions cited *supra* show that the question whether, beyond this liability for the non-performance of duty, there is a liability for the negligence of the corporation's servants, is still open. The English courts (*Foreman* v. *Mayor &c.*, *supra*) now decline to recognize any distinction in applying the doctrine of *respondeat superior* to charitable and to business corporations. Yet this doctrine has never been sustained on satisfactory grounds; it has been vigorously assailed at times (see Parliamentary Blue Book on the Employers' Liability Bill, 1877; testimony of Bramwell and Brett, L. JJ., pp. 58, 59, 115, 119), and is questioned in Pollock on Torts, 2d edition, 69, 70. It may be well doubted, therefore, whether it should be extended to the case of charitable corporations, where it is more likely to impair than to secure substantial justice. The Connecticut Supreme Court in the last decided case on the point (*Hearns* v. *Waterbury Hospital*, 33 Atl. Rep 595), after a careful and exhaustive consideration of authorities, has refused to make such an extension. The outcome of a similar case, at present awaiting decision in the New Hampshire Supreme Court, will be watched with interest.

Of course if, in certain circumstances, a charitable corporation can be said to be a servant of the public in the sense that an officer of state is such a servant, the doctrine of *respondeat superior* is inapplicable on other grounds.

RECENT CASES.

AGENCY — LIBEL — LIABILITY OF MANAGING EDITOR OF NEWSPAPER. — *Held*, where the managing editor of a newspaper is also an officer of the corporation owning the paper, he is equally liable with the publisher and proprietor for the consequences of a libellous publication, and mere want of knowledge on his part is no defence, since it is his business to know. *Smith* v. *Utley*, 65 N. W. Rep. 744 (Wis.).

If in this case the libellous matter actually passed through the hands of the managing editor to those employed in the actual work of printing, there is no question of his liability. It is a positive act, like a trespass on land. But assuming that it did not so happen, the case turns on the distinction between nonfeasance and misfeasance. Did the editor by assuming his position so interfere, and play such an active part, that he became responsible to third persons for the careful conduct of the paper? It seems difficult to say that he did not, and yet it has been held that a general agent, having control of real estate, cannot be held for injuries received from the falling of a door on account of its being out of repair. *Baird* v. *Shipman*, 132 Ill, 16. The fact that the editor here was an officer of the corporation has no bearing on the matter.

AGENCY — WHEN KNOWLEDGE OF AGENT IS KNOWLEDGE OF PRINCIPAL. — Where the agent of an insurance company has acquired knowledge of outstanding

over-insurance, by virtue of his relation as attorney for the party insured and in a transaction wholly foreign to the business of the company which it is his duty to transact, his knowledge does not estop the company. *Union Nat. Bank* v. *German Ins. Co.*, 71 Fed. Rep. 473.

The general statement that knowledge of the agent is knowledge of the principal means that the knowledge of the agent is so when acquired in a transaction which is part of the agency. Knowledge acquired in a wholly collateral proceeding cannot be imputed to the principal. It is on this ground the case rests, and not on the fact that the statements between attorney and client are confidential. In *Trentor* v. *Pothen*, 49 N. W. Rep. 129, and in *St. Paul Ins. Co.* v. *Parsons*, 50 N. W. Rep. 240, a full discussion of the subject will he found.

BILLS AND NOTES — INNOCENT PURCHASER — KNOWLEDGE AT TIME OF ACTION BROUGHT OF AN EQUITABLE DEFENCE. — A bill was drawn on and accepted by the defendant payable to the drawer, and by him indorsed to the plaintiff, an innocent purchaser. The bill was dishonored at maturity, but before trial was begun in this action the plaintiff learned that between the drawer and the defendant there was a failure of consideration. The plaintiff held at the time of dishonor, and still holds, sufficient funds of the drawer to pay the bill, but neglects to appropriate them and prosecutes this action at the instigation of the drawer. *Held*, the funds of the drawer in the hands of the plaintiff should be offset against the bill. *Van Winkle Machinery Company* v. *Citizens' Bank*, 33 S. W. Rep. 862 (Tex.).

The result reached is eminently satisfactory and seems correct. The true ground would seem to be that under the circumstances the drawer became the real debtor, for whom the defendant was a surety, who, when sued by the creditor, is entitled to set off any assets of his principal in the hands of the plaintiff.

BILLS AND NOTES — UNACCEPTED CHECK. — A bank is not liable to a check-holder in a suit on the check, although it has funds of the drawer more than sufficient to pay the check. The question arose on demurrer. *Cincinnati, Hamilton, & Dayton R. R. Co.* v. *Metropolitan Nat. Bank*, 42 N. E. Rep. 700 (Ohio).

Ohio thus accords with the majority of jurisdictions; a few States are *contra*. 2 Randolph on Commercial Paper, 280; 2 Daniels on Negotiable Instruments, § 1638. See NOTES.

CONFLICT OF LAWS — DOMICIL — EVIDENCE OF CHANGE — RESIDENCE AT VARIOUS PLACES. — D.'s domicil of origin and birthplace were Scotch. At the age of eleven he went to school in England, remaining there for eight years, but spending vacations in Scotland. He then went to Media for five years, there becoming a priest in the Church of England. He returned to Scotland for six months. For twenty-six years thereafter he served in eight or more churches in England, spending however a year upon the Continent, another in Scotland, and two in Grenada. During all these years, unless abroad, D. spent two or three months in each year in Scotland. In England he lived principally in apartments and in the houses of others, but soon after marriage, in 1872, took a house for three months, and later the lease of another for seven. His wife died in 1891, the question being as to D.'s domicil at the time of her death. *Held*, that it was Scotch. *In re Dunbar*, 12 *The Times* Law Rep. 153.

The court thought that the domicil of origin had never been changed, though the case did not require a decision as to this. The case exhibits a tendency to follow *In re Patience*, 29 Chan. Div. 976, although its facts would seem to bring it within the decision of *In re Craignish*, L. R. [1892] 3 Chan. 180. American courts have less difficulty in finding a change of domicil. *Williams* v. *Roxbury*, 12 Gray, 21; *Wilbraham* v. *Ludlow*, 99 Mass. 587; *Hicks* v. *Skinner*, 72 N. C. 1.

CONSTITUTIONAL LAW — GETTYSBURG RESERVATION. — Under an act of Congress providing for monuments and tablets at Gettysburg "for the purpose of preserving the lines of battle at Gettysburg, Pa., and for properly marking with tablets the positions occupied by the various commands," proceedings were begun for the condemnation of land. *Held*, the act is within the constitutional power of the national legislature. *United States* v. *Gettysburg Electric Ry. Co.*, 16 Sup. Ct. Rep. 427. See NOTES.

CONTRACTS — ACCORD AND SATISFACTION. — Plaintiff and defendant disagreed as to the amount due the former as commission for a sale. Defendant sent a check for the amount admitted by him to be due plaintiff, and enclosed a voucher, to be signed and returned by plaintiff, acknowledging receipt of the check "in *full* payment for commissions." Plaintiff kept and used the check, but did not return the voucher. *Held*, by accepting the check, plaintiff had precluded himself from disputing the fact that the check was full payment. *Nassoiy* v. *Tomlinson et al.*, 42 N. E. Rep. 715 (N. Y.).

The claim here being for an unliquidated sum, and plaintiff having accepted the

check, an accord and satisfaction is fairly shown. Plaintiff had no business to keep and use the check otherwise than on the conditions on which it was sent. As the court aptly puts it, "When he indorsed and collected the check referred to in the letter asking him to sign the enclosed receipt in full, it was the same, in legal effect, as if he had signed and returned the receipt, because acceptance of the check was a conclusive election to be bound by the condition upon which the check was offered." 2 Parsons on Contracts, 8th ed., p. *687 and note *t*, has a discussion of the subject. In connection with this subject it is interesting to note a case just decided in Michigan, where plaintiff, having received a sum for wages minus the amount of a railway fare, which defendant expressly refused to allow, and having given a receipt in *full*, was held thereafter precluded from successfully suing on the claim for the fare, though both parties admitted the sum actually paid to be due so far as it went. *Tanner* v. *Merrill*, 65 N. W. Rep. 664 (Mich.). Two judges dissent, on the ground that payment of a debt admittedly due is no considerationfor a discharge of a further claim. But as the two claims were not separate, and the payment and receipt were given for a lump amount which was unliquidated, the case would seem to be analogous to the New York case.

CONTRACTS — ILLEGALITY. — The plaintiff and defendant had entered into a partnership to carry on certain faro and crap games. The plaintiff now sues for his share of the proceeds in the hands of his partner. *Held*, that where the illegal contract has been carried out, the illegality of the contract is not a bar to calling the partner who holds the profits to account. *McDonald* v. *Lund*, 43 Pac. Rep. 348 (Wash.).

The decision in this case is carefully reasoned out and well supported by authorities cited, yet it does not appear sound. The plaintiff's claim is founded on the contract, and allowing a recovery is carrying the contract into effect. The better mode of dealing with such cases is to leave the parties remediless. The vice of the contract enters into the settlement, and the law should interfere to aid neither when both are *in pari delicto*. *Dixon* v. *Olmstead*, 9 Vt. 310; *Embrey* v. *Jemison*, 131 U. S. 336; *Harvey* v. *Merrill*, 150 Mass. 1; 2 Parsons on Contracts, 8th ed. p. *747, and cases cited.

CONTRACTS — PUBLIC POLICY — AGREEMENT TO WAIVE CLAIM FOR NEGLIGENCE. — Where an employee joins a voluntary relief association to which he contributes, and his employers guarantee the obligations, pay the operating expenses, make up deficits in the fund, supply surgical attendance, etc., an agreement by him in his voluntary application for membership that acceptance of benefits from the association for an injury shall operate as a waiver of his claim for damages, is not void as against public policy. *Otis* v. *Pennsylvania Co.*, 71 Fed. Rep. 136.

Where under a similar agreement he elects to accept aid from the association in ignorance of the strength of his claim against the company, it was *held* in another recent case that the effect of his election, in barring an action against the company, is not avoided. *Vickers* v. *C. B. & Q. R. R.*, 71 Fed. Rep. 139.

Both decisions are amply supported by the authorities cited. It is the election given to the employee either to receive aid from the association or to sue the company, that removes the objection that the contract is one to avoid liability for one's own negligence. Contracts of the latter class are of course void. *Roesner* v. *Hermann*, 8 Fed. Rep. 782; *Runt* v. *Herring*, 21 N. Y. Supp. 244.

CONTRACTS — THE POWERS OF COLLEGE AUTHORITIES. — Plaintiff, who had been expelled from defendants' college, brought an action for breach of contract, alleging that the expulsion was unlawful. *Held*, that the relation between a student and his college is not contractual, that there was no ground for judicial interference, and that plaintiff's only remedy was by appeal to the Visitor. *Green* v. *Master and Fellows of St. Peter's College, Cambridge*, 31 Law Journal, 119. See NOTES.

CORPORATIONS — LIABILITY OF CHARITABLE CORPORATION FOR NEGLIGENCE OF ITS SERVANTS. — *Held*, a charitable corporation (in this case a hospital) is not liable for injuries to a patient due to negligent treatment by the physicians and nurses in its employ where it has exercised due care in their selection. *Hearns* v. *Waterbury Hospital*, 33 Atl. Rep. 595 (Conn.). See NOTES.

CORPORATIONS — MISAPPROPRIATION BY DIRECTORS. — *Held*, that one who holds stock as collateral may maintain a bill against the directors whose misappropriation impairs his security. *Green* v. *Hedenberg*, 42 N. E. Rep. 851 (Ill.).

An English case decided in 1852 held that a *cestui que trust* of shares in a railway could, by joining its trustee, maintain a bill against the directors alleging certain illegal acts were in contemplation. *Ry.* v. *Rushout*, 5 De G. & S. 290. In 1879 the Supreme Court of Minnesota held that an action would lie by pledgees of stock against the directors, not in the name of the corporation, but directly to protect their own interest against a breach of trust. *Baldwin* v. *Canfield*, 26 Minn. 43. The principal case follows this latter decision without comment.

CORPORATIONS — ULTRA VIRES — LAWFUL ACT FOR UNLAWFUL PURPOSE. — The receiver of an insolvent national bank sued a State bank for an assessment made upon shares of an insolvent bank owned by the defendant corporation, which pleaded that it did not become possessed of the shares by way of pledge, upon execution, or upon compromise of a debt, the only ways in which it lawfully might; that its president had bought the stock and caused its transfer to the defendant, against provisions of both Federal and State statutes. *Held*, that the defendant could not "set up its own violation of law to escape the responsibility resulting from its illegal action." *State Bank* v. *Hawkins*, 71 Fed. Rep. 369.

The court carefully distinguishes between *ultra vires* in the sense of a lack of corporate authority to perform the act in question under any circumstances, in which case it is available as a defence to either party to the contract, and *ultra vires* as applied to an act which the corporation is authorized to perform for a specific purpose, and which has been performed for an unauthorized purpose, in which case it is not. The present decision falls within the latter class. On the first point, see *C. T. Co.* v. *Pullman Co.*, 139 U. S. 24; 8 HARV. LAW REV. 506. The principal case cites numerous authorities upon the second point. See especially *Bank* v. *Matthews*, 98 U. S. 621; *Fritts* v. *Palmer*, 132 U. S. 282; *Ditch Co.* v. *Zellerbach*, 37 Cal. 543.

CORPORATIONS — ULTRA VIRES CONTRACT — SURETY. — A. contracted with a county to furnish water supply. B. signed A.'s bond as surety. The county paid the contract price in advance and A. refused to perform, on the ground that the contract was *ultra vires*. *Held*, (1) A. is liable to the county on a *quantum meruit* for the consideration so paid; (2) B. cannot be held as surety for this liability. *Edwards County* v. *Jennings*, 33 S. W. Rep. 585 (Tex.).

It is well settled in many jurisdictions that where one party to a contract has performed and the other party repudiates and sets up the defence of *ultra vires*, the party so repudiating is liable on a *quantum meruit*. See *R. R. Co.* v. *Keokuk Co.*, 131 U. S. 389. The principal case is interesting as bringing out very clearly the nature of this liability. It results from the invalidity of the contract, and is not in any sense grounded on the contract itself. Therefore the surety whose liability was only on the contract was not bound. The rule that a surety will not be held beyond his original liability is elementary. See opinion of Judge Story in *Meller* v. *Stewart*, 9 Wheat. 680.

EQUITY — CONVEYANCE IN FRAUD OF INTENDED HUSBAND. — A., ten days before her marriage to B., voluntarily conveyed her real estate to C. without the knowledge of B. A child was born and A. died. C. conveyed to D., who conveyed to the child, both deeds reciting a nominal consideration. *Held*, such conveyances were in fraud of the marital rights of the husband, and void as to him. Therefore he is entitled to his curtesy. *Leary* v. *King*, 33 Atl. Rep. 629 (Del.).

Before the modern Married Women Acts the doctrine was universal that a voluntary secret conveyance by either husband or wife during the engagement and before marriage was a fraud on the marital rights of the other, and void to that extent. *Strathmore* v. *Bowes*, 1 Ves. Jr. 22; see also collection of authorities in 1 Wh. & T. L. C. 317. Under the modern statutes the courts have shown no disposition to alter the doctrine, and the rule remains substantially the same. *Duncan's Appeal*, 7 Wright, 67; *Beere* v. *Beere*, 44 N. W. Rep. 809 (Ia.); *Murray* v. *Murray*, 13 S. W. Rep. 244 (Ky.); *Ferebee* v. *Pritchard*, 16 S. E. Rep. 903 (N. C.).

EQUITY — UNAUTHORIZED USE OF PUBLIC FUNDS — ATTORNEY GENERAL ONLY CAN ENJOIN. — By statute an appropriation was made for the erection of an insane asylum and defendants were thereby appointed as commissioners to locate and build the asylum. One Taylor filed a bill in equity in the name of the State as plaintiff, alleging that this statute was unconstitutional and that the expenditure of the State's money in the erection of the asylum was therefore unauthorized. The bill prayed that defendants be enjoined from expending the appropriation. *Held*, that equity has no jurisdiction to interfere. *State* v. *Lord*, 43 Pac. Rep. 471 (Ore.).

The decision is handed down in a lengthy but interesting opinion by Wolverton, J. He supports the result on several distinct grounds. The most satisfactory of these grounds appear to be that the Attorney General does not appear as a party to the bill; that the bill must therefore be taken as if filed in the name of Taylor; that on the allegations of the bill no property right of Taylor's will be infringed by the proposed expenditure; that the Attorney General is the only proper party to ask an injunction against an unauthorized use of public funds; that the bill does not therefore disclose any ground on which equity can take jurisdiction at the instance of Taylor. The opinion goes on to consider under what circumstances equity will take jurisdiction of a bill for an injunction filed by the Attorney General in behalf of the State.

EQUITY — WRONGFUL CONVEYANCE BY TRUSTEE — RIGHTS OF PURCHASER AFTER PARTIAL PAYMENT. — This was a bill by a *cestui* to recover land wrongfully conveyed by the trustee to defendant. Defendant claimed an indefeasible title as purchaser for value without notice. It appeared that part of the purchase money had been paid before notice. The court directed that defendant should convey. *Held*, that this was correct, since defendant, to insist on his right to retain the legal title as security for the money paid in good faith, should have claimed this in his answer. *Webb* v. *Bailey*, 23 S. E. Rep. 644 (W. Va.).

While it is too late to contend that a purchaser in a case like this should have an indefeasible title, still, as the court admits, he has an equity *pro tanto* for money paid before notice. Perry on Trusts, § 221. Under the modern doctrine one seeking to recover land wrongfully conveyed by a trustee must allege in his bill that defendant is not a *bona fide* purchaser for value. *Moloney* v. *Rourke*, 100 Mass. 190. How then can it be said plaintiff was entitled to the relief the court has given him in the principal case when it clearly appears defendant has rights as a *bona fide* purchaser for value? The rights of a *bona fide* holder of a bill or note under like circumstances would seem to be analogous. *Dresser* v. *Ry. Co.*, 93 U. S. 92.

EVIDENCE — ATTEMPT AT MODIFICATION ON A NEW TRIAL. — On a new trial the evidence of the plaintiff's witnesses was changed with the apparent purpose of avoiding the decision of the appellate court. *Held*, the evidence of the witnesses at the former trial is to be taken as the fact. *Williams* v. *D. L. & W. R. R.*, 36 N. Y. Supp. 274.

It would seem to be plain law that when a new trial is ordered in general terms the issues of fact are again open for determination upon the evidence adduced. *Hidden* v. *Jordan*, 28 Cal. 301. It does not clearly appear in the principal case that the witnesses at the two trials were the same persons, but if so the discrepancies in their testimony would merely serve to impeach their credibility. Chamberlayne's Best on Evidence, 634.

EVIDENCE — PAROL EVIDENCE. — A., B., and C., nephews of one X., since deceased, occupied certain lands belonging to X., executing a lease for two years, which was extended from time to time. After the uncle's death, the nephews set up against certain devisees an oral agreement made with them by X. that the lands should be theirs at his death. There were provisions in the lease seemingly inconsistent with such an agreement, particularly in the last extension, which apparently gave X. power to sell. *Held*, the court is competent to reconcile on a reasonable basis these inconsistencies; and on the whole there is sufficient evidence of the parol portion of the agreement to justify the granting of specific performance. Jenkins, J., dissenting. *Harman* v. *Harman*, 70 Fed. Rep. 894.

The case defines the extent of the rule allowing parol evidence when an entire contract is originally verbal and a part only is reduced to writing, namely, that the parol portions of such an agreement must be made out clearly and satisfactorily, and must not contradict the written portion. For a statement of the rule, see 1 Greenleaf, Evidence, 284 *a* (13th ed.); *Ballston Bank* v. *Marine Bank*, 16 Wis. 120, 136.

EVIDENCE — PAROL EVIDENCE RULE. — The plaintiff was tenant to the defendant under a written lease, and brings this action for injury from non-repair of house. Parol evidence was offered to show that in addition to the terms of the written contract the defendant had undertaken to repair the tenement. This evidence was rejected. *Held*, that no attempt was made to vary the written contract, but the evidence offered tended merely to establish a collateral stipulation concerning the same subject matter, and should have been admitted. *Hines* v. *Wilcox*, 33 S. W. Rep. 914 (Tenn.).

The exception to the "parol evidence rule" recognized in this case is well established. Greenleaf, Evidence, § 284 *a*, note *b*; Best's Evid., § 226 A, and cases cited. The collateral contract should be very distinctly collateral. Previous decisions, however, have gone as far as the present in this respect. *Ayer* v. *Bell Mfg. Co.*, 147 Mass. 46, and cases referred to above.

GIFT OF GROWING CROPS — DELIVERY. — A life tenant of certain land gave plaintiff by parol a growing crop of corn. Before the crop was ripe, the life tenant died, and the remainderman conveyed his interest in the land to the defendant. Plaintiff brings an action to enjoin defendant from appropriating the corn crop to her use. *Held*, that life tenant could dispose of growing crops by gift, and his gift to plaintiff was valid. *Shaffer* v. *Stevens*, 42 N. E. Rep. 620 (Ind.).

It is well understood that a gift, unaccompanied by actual or constructive delivery of the property given, is not valid. In *Noble* v. *Smith*, 2 Johns. (N. Y.) 52, Chief Justice Kent decided that growing corn was susceptible of delivery only by putting the donee in possession of the soil, and that anything less than this left the gift ineffectual.

It would seem, therefore, in the principal case, that the growing corn passed to the life tenant's executor (Taylor, Landlord & Tenant, § 534), and that the plaintiff had no interest in it.

JUDGMENTS — RES ADJUDICATA. — The defendant was arrested and an order of deportation issued under the Chinese Exclusion Act. She had previously been arrested and discharged on *habeas corpus* proceedings. *Held*, that though the discharge was obtained by perjury and a fraudulent writing, it was decisive of the present case, and the order of deportation must be reversed. *U. S.* v. *Chung Shee*, 71 Fed. Rep. 277.

This is sound, and in accord with previous decisions. Collateral impeachment of a judgment in *habeas corpus* can be made only on the ground of want of jurisdiction. Freeman, Judgments, § 619. Judgments in general are not subject to collateral attack by parties on the ground set forth in this case. See Freeman, § 334, and Wells's Res Adjudicata, Chap. I. Sec. 9.

LIFE INSURANCE — RIGHTS OF BENEFICIARY. — By statute the beneficiary in a life policy is entitled to the proceeds of the policy, not exceeding $10,000, free from the claims of creditors of the insured, though the premiums were paid by him. *Held*, that a man's wife, the beneficiary in several policies maintained by him, may retain the proceeds, though it turns out his estate is bankrupt and the proceeds exceed $10,000, since it did not appear that he paid premiums after bankruptcy. A policy payable to a beneficiary is not part of the estate of the person who pays the premiums. *Jones* v. *Patty*, 18 So. Rep. 794 (Miss.).

The decision is in accord with the weight of authority that the beneficiary named in a policy has a vested right with which the insured cannot interfere. *Pingrey* v. *Ins. Co*, 144 Mass. 374, 1 HARV. LAW REV. 156; *Garner* v. *Ins. Co.*, 110 N. Y. 266, 2 HARV. LAW REV. 239; Bliss on Life Ins. § 318; Beach on Ins. § 602. But see 17 Western Jurist, 297. This seems the better view. It is difficult to say just what the nature of this right is because of the confusion on the subject of the rights of beneficiaries in contracts. It is not a trust, since there is no *res* held in trust, and yet it has elements similar to a trust. There is a difficulty, however, when premiums are paid by a bankrupt. Even without a statute it would seem that a reasonable provision may be made for his family by a bankrupt. *Central Bank* v. *Hume*, 128 U. S. 195; *McCutcheon's Appeal*, 99 Pa. St. 133. Cf. *Stokes* v. *Coffey*, 8 Bush, 533.

MORTGAGE — DEFECTIVE RECORD OF INSTRUMENT. — A mortgage left at the recorder's office is to be regarded as recorded from that time, in spite of the fact that it is actually recorded in the wrong book. *Farribee* v. *McKerrihan*, 33 Atl. Rep. 583 (Pa.).

This may be regarded as the settled doctrine in Pennsylvania since the case of *Glading* v. *Frick*, 88 Pa. St. 460, which overruled *Luch's Appeal*, 44 Pa. St. 519, going back to the case of *M'Lanahan* v. *Reeside*, 9 Watts, 511. The rule may seem harsh on a purchaser, but that the owner of land should suffer for the negligence of the recorder seems equally hard. Many instruments may be wrongly recorded in the absence of negligence, as where they appear to be deeds, but are in fact mortgages. Should they be held unrecorded until after some court has passed on their character, and so enabled them to be entered on the right book? What if the court then reverses its decision? Must the owner wait till then before he can rely on the record? He has done all that is required of him when he deposits the deed in the hands of the recorder. That is all the statute demands of him. Of course, if it exacted not only a recording, but a recording in such and such a book, a different decision might be reached.

PATENT LAW — GENERIC AND SPECIFIC PATENTS. — The issue by the patent office of a specific patent covering part of an invention for which an application is pending in the office is not an anticipation of the broader patent when it is issued. *Thomson-Houston Electric Co.* v. *E. & H. Ry. Co.*, 71 Fed. Rep. 396. See NOTES.

PERSONS — MARRIAGE AFTER DIVORCE — VALIDITY OF PROHIBITED MARRIAGE. — *Held*, that where, under a statute, the decree of divorce prohibited the offender's marrying again, a marriage in spite of this is not void, there being no nullity clause in the statute. *Crawford* v. *State*, 18 So. Rep. 848 (Miss.).

Being *res nova* in Mississippi, the court avowedly adopts this view against the weight of authority. It examines the nature of the marriage contract, and finds strong grounds of public policy for holding such marriages valid when the statute will permit. The tendency of the courts to do this is pointed out in the cases that have arisen under statutes regulating the manner of solemnizing marriages. See Bishop, Mar., Div. & Sep., §§ 449, 698, 707. On the other hand, the Supreme Court of Vermont in the recent case of *Ovitt* v. *Smith*, 33 Atl. Rep. 769, holds such a marriage void, on the ground that a marriage contract, like any other contract, is void when prohibited by law.

PLEDGE — PLEDGEE CONVERTS BY REPLEDGING. — *Held*, that a pledgee, who repledges for an amount greater than the pledgor's debt the goods intrusted to him on the contract of pledge, is guilty of conversion. The pledgor has an immediate right of action in trover without tendering payment of the debt. *Richardson* v. *Ashby*, 33 S. W. Rep. 806 (Mo). See NOTES.

PROPERTY — BUILDING HIGH FENCE — MALICE. A. and B. owned adjoining lots. A.'s house was built on the boundary line. B. on his own land erected a high fence so as to completely shut off the light and air from the windows of A.'s house. B. acted purely from malicious motives. *Held*, A. had no remedy at law or in equity. *Letts* v. *Kessler*, 42 N. E. Rep. 765 (Ohio).

The case is interesting as an extreme application of the rule that an act legal in itself does not become illegal because actuated by a malicious motive. This rule is sustained by the great weight of authority, especially in cases where the act is a malicious use of a property or contract right. *Stevenson* v. *Newnham*, 13 C. B. 285 (Eng.); *Chatfield* v. *Wilson*, 28 Vt. 49. *Chesley* v. *King*, 74 Me. 164, is *contra*, but its authority is greatly diminished by the decision in *Heywood* v. *Tillson*, 75 Me. 225. *Bartlett* v. *O'Connor*, 36 Pac. Rep. 513 (Cal.), *contra*, is ill considered and entitled to little weight.

The civil law, in cases of adjoining owners, allowed an action for the malicious use of property rights. D. 39, 3, 1, 12 (Ulpian). The Scotch and German courts have followed the civil law, and are therefore opposed to the common law rule. In Massachusetts there is a statute giving a remedy in case of malicious erection of fences. St. 1887, c. 348.

PROPERTY — DEDICATION OF STREET. — The plaintiff sued for a trespass by defendant company in laying gas pipes on certain land of his. The defendant claimed that the land had been dedicated as a public street, and offered in evidence a deed by plaintiff conveying adjoining land and reserving the land in question as that piece "lying within the lines of Bates Street as laid out upon the city plan." *Held*, that such a plotting did not amount to an actual dedication, nor was the plaintiff estopped to deny any public right of way over the land. *Patterson* v. *People's Natural Gas Co.*, 33 Atl. Rep. 575 (Pa.).

This decision seems undoubtedly correct. A parol dedication to the public must be more than prospective to have any effect. *Cincinnati* v. *White*, 6 Peters, 431. The reference to this land as a street in the deed did not give rise to any public right of way. *Leigh v. Jack*, 5 Ex. Div. 264.

PROPERTY — RIPARIAN RIGHTS — ACCRETION. — Plaintiff owned a farm on the east bank of the Missouri River. An island formed in the east half of the river and opposite plaintiff's farm. By accretion to the island the river channel between the island and plaintiff's farm was gradually choked up, and finally the entire body of the Missouri flowed through what had formerly been the western channel. *Held*, that a riparian owner on the Missouri owns the soil to the river's edge only, and not to the thread of the stream; that consequently plaintiff's western boundary was not affected by the closing up of the eastern channel. *Perkins* v. *Adams*, 33 S. W. Rep. 778 (Mo.).

There is a conflict of authority as to whether a riparian owner on the great inland rivers owns to the thread of the stream or only to the water's edge. Kent's Comm., 12th ed., Vol. III. pp. *428–*431. A long line of decisions has firmly established the latter doctrine in Missouri. It follows as a consequence of this doctrine that an island which forms in such a river does not become the property of the riparian owners. In the principal case as long as any part of the Missouri could be said to flow to the east of the island, plaintiff's claim was limited to the eastern edge of the eastern channel. At some particular moment the entire body of the Missouri began to flow through what had been the western channel. Plaintiff could not claim that he, by this sudden change in location of the eastern bank of the Missouri, became entitled to the very appreciable body of land lying between the new location of the eastern bank and its location immediately before the change occurred.

PROPERTY — RULE AGAINST PERPETUITIES — RESTRAINT ON ALIENATION. — The testator, being in partnership with his son and another, directed that said partnership should continue so long as his son or any of his son's children should desire, the firm to have the use of real estate now occupied, paying rent therefor, and of the tools and other assets comprising testator's share of the capital. Subject to these provisions, he gives all his property, including his share of the partnership income, to a charity; if the partnership ceases for any cause, he gives one fourth of his share of the firm property to his son or his heirs, and three fourths to the charity. *Held*, that these provisions would make the executor a trustee of that portion of the estate which was part of the firm's capital, so long as testator's son or any of his children should desire, and that this is obnoxious to the rule against perpetuities; that consequently one fourth

vested immediately in the son and three fourths in the charity. *Hamlin* v. *Mansfield*, 33 Atl. Rep. 788 (Me.).

It would seem that an equitable fee vested immediately in the charity in this case, subject to the provisions in regard to the partnership. If so, the rule against perpetuities could have no application, except under the erroneous doctrine of *Slade* v. *Patten*, 68 Me. 380, by which perhaps the court felt bound. The provisions for the firm, while not enforceable against the equitable owner, might well have been permitted at the discretion of the trustee. The only remote gift is the one fourth to the son or his heirs, since it may not vest for two lives. This gift the court gives effect to, so that the case seems wrong on all points.

PROPERTY — TENANT FOR LIFE AND REMAINDERMAN — PAYMENT OF CHARGE ON INHERITANCE. — H. devised two houses, subject to a mortgage, to his wife C. for life, remainder to his children equally. C. expended a part of the rents in discharging the mortgage, and died. Her executor claims the amount so spent from the trustees of H.'s will, the houses having been sold under its provisions. *Held*, the fact that the relation of parent and child subsisted between C. and the remaindermen does not rebut the presumption that she intended to keep the charge alive for her own benefit. *In re Harvey*, [1896] 1 Ch. 137.

The rule followed has grown up despite the fact that a large proportion of future estates created are, as matter of common knowledge, similar to the above, and the decision would seem correct. The rule may be traced through *Jones* v. *Morgan*, 1 Bro. C. C. 206, 218; *St. Paul* v. *Lord Dudley*, 15 Ves. 167; *Burrell* v. *Lord Egremont*, 7 Beav. 205; and (dictum) *Morley* v. *Morley*, 5 D. M. & G. 610, 626. Certain expressions in the latter case may justify the defendants' contention. The present decision fails to state whether there was an assignment of the claim, losing sight of a distinction touched upon in the earlier cases. The passage quoted by A. L. Smith, L. J., would seem to indicate that there was not. As to estates tail, see *Jones* v. *Morgan* (*supra*), *St. Paul* v. *Lord Dudley* (*supra*), and 1 Story, Eq. Jur., 12th ed. c. 8, § 486.

PROPERTY — WATER — SPRING — OWNERSHIP. — Defendant came on plaintiff's land and carried away water from plaintiff's spring. *Held*, plaintiff had such property rights in the water as to entitle him to recover damages. *Metcalf* v. *Nelson*, 65 N. W. Rep. 911 (S. D.).

The point came up squarely, as the plaintiff sued for damages for the value of the water rather than to pursue his certain remedy of trespass. The few English authorities reach a contrary conclusion. They go on the ground that property in spring water is analogous to property in air and wild animals, and that title can be acquired only by occupancy; the owner of the reality having merely a usufructuary interest. The last English decision is that of *Race* v. *Ward*, 4 E. & B. 703 (1855). See also 2 Blackstone. 14, 18; *Year Book*, Trin. 15 Ed. IV. 29, case 7; *Manning* v. *Wasdale*, 5 A. & E. 758, The principal case seems to be the only one where the question has arisen in the United States. The conclusion is a desirable one, and the case would doubtless be followed. Perhaps it can be reconciled with the English decisions, as it assumes that the spring was formed by percolating waters, while the English cases assume that a spring is the outlet of an underground channel. Both the English and American courts recognize a distinction between rights in percolating waters and those flowing in an underground channel. The authorities are collected in 64 Am. Dec. 727–730.

TORTS — ASSAULT — RIGHT OF ACTION IN PARTY CONSENTING TO AN ABORTION. — Defendant induced plaintiff to submit to an attempted abortion by a physician procured by plaintiff. Plaintiff's health was thereby seriously injured, and she sued defendant for damages. *Held*, her consent to the act deprived her of a right to recover civil damages therefor. *Goldnamer* v. *O'Brien*, 33 S. W. Rep. 831 (Ky.).

It is doubtful whether in our law there are any general principles applicable to the right of a party to recover damages for the results of a criminal act to which he has consented. Consent to the destruction of property, under circumstances making the destruction criminal, would doubtless prevent a civil recovery by the owner. Consent to seduction is a bar to a civil suit by the party seduced. On the other hand, consent to the battery involved in a fist-fight is, by the great weight of authority, no defence to a civil action by either of the parties against the other. It is said the latter is a breach of the peace, something so abhorrent to the law that consent to it is void on public grounds. This is an excellent reason for severe criminal punishment, doubtless, but it is perhaps not quite clear how the public weal is benefited by allowing a willing party to a criminal act to recover for the consequences of his own law-breaking. If it be sound law, however, to allow a principal in a prize-fight to salve his injuries at his adversary's expense, public policy would seem to demand even more strongly the same privilege for the victim of a criminal operation. The Kentucky court recognizes the

similarity of the two cases, and criticises the decisions allowing mutual actions to prize-fighters.

TORTS — MALICIOUS PROSECUTION OF A CIVIL ACTION. — *Held*, an action will lie for malicious prosecution of a civil suit without arrest of the person or attachment of property. *Lipscomb* v. *Shofner*, 33 S. W. Rep. 818 (Tenn.). See NOTES.

VOLUNTARY ASSOCIATIONS — RESIGNATION. — The defendants were the governing committee of an association formed to provide for the legal assistance of the members when necessary, and the plaintiff sought an injunction to prevent them from depriving him of membership. The plaintiff had offered his resignation, but had withdrawn it before any action was taken. No club rule on resignation existed. *Held*, (by Court of Appeal), assuming there was jurisdiction, the notification by the plaintiff when received by the committee was an election to resign, from which he could not retreat. *Finch* v. *Oake*, 12 *The Times* Law Reports, 156.

The English courts do not recognize voluntary associations as such. *Hector* v. *Flemyng*, 2 M. & W. 172. But they recognize that a relationship of some kind exists among the members by uniformly entertaining suits to prevent expulsions contrary to the club rules or the laws of the land. *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. D. 346; *Baird* v. *Wells*, 44 Ch. D. 661, 670; and compare *Rigby* v. *Connol*, 14 Ch. D. 482. No authority on the precise point has been found, and the court mentions none. The decision, however, is probably correct, making the relation of a member to the organization like that of a party to a contract terminable on notice, or perhaps that of a continuing guarantor. *Offord* v. *Davies*, 12 C. B. N. S. 748. If a provision is made by the rules that a resignation must be accepted to be complete, that of course settles the matter, and possibly, in an organization distinctly social, that provision might be considered to be impliedly assented to by the members.

REVIEWS.

THE WORKS OF JAMES WILSON. Edited by James DeWitt Andrews. Chicago: Callaghan & Co. 1896. 2 vols. pp. xlvi, v, 577, 623.

The present edition in two large volumes, in clear type, with copious notes and index, is in striking contrast to the three modest little octavo volumes, containing merely the unembellished text of Mr. Justice Wilson's writings, which formed the original edition of 1804. The lectures which are collected in these volumes are those which the author prepared, and in great part delivered, at the University of Pennsylvania in the years 1790–91 and 1791–92. He had contemplated a three years' course; but his third series of lectures was never even prepared, so that his published work fails to cover the whole framework of the law. In addition to the lectures, there are included in this edition, as in the former one, his speech in defence of the Constitution before the Pennsylvania Convention (1787), his masterly argument on the power of Congress under the Articles of Confederation to incorporate the Bank of North America, together with one or two other speeches, and fragments of essays. Several speeches published in the original edition are justly deemed of insufficient importance to justify reprinting.

The value of his work is chiefly historical. The fact that his scheme of lectures was never completed, and the additional fact that his arrangement and treatment is colored by his training in the civil law, militate of course against its use as a text-book. Its historical value lies chiefly in the author's attitude on certain constitutional questions. He anticipated by many years the conclusions reached by the United States Supreme Court as to the nature of a grant of land and of a corporate charter, and, what is most to his credit, he had already taken the position, more than